



CONSUMER FINANCIAL PROTECTION BUREAU

Statement on Enforcement and Supervisory Practices Relating to the Small Business

Lending Rule under the Equal Credit Opportunity Act and Regulation B

AGENCY: Consumer Financial Protection Bureau.

ACTION: Policy guidance.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is publishing a statutorily mandated small business lending rule concurrently with this Policy Guidance. The rule amends Regulation B to implement changes to the Equal Credit Opportunity Act (ECOA) made by section 1071 of the Consumer Financial Protection Act of 2010 (CFPA). This policy guidance informs covered financial institutions that the CFPB intends to focus its supervisory and enforcement activities in connection with the new rule in particular on ensuring that covered lenders do not discourage small business loan applicants from providing responsive data, including responses to lenders' ECOA-mandated demographic data requests.

DATES: This Policy Guidance is applicable [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Vincent Herman, Senior Counsel, Office of Enforcement, at (202) 435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 2010, Congress passed the CFPA. Section 1071 of the CFPA¹ amended ECOA² to require that financial institutions collect and report certain data regarding applications for credit

¹ Pub. L. 111-203, tit. X, section 1071, 124 Stat. 1376, 2056 (2010), codified at ECOA section 704B, 15 U.S.C. 1691c-2. Section 1071's statutory purposes are to: (1) facilitate enforcement of fair lending laws; and (2) enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.

² 15 U.S.C. 1691 *et seq.*

for small businesses. The CFPB has now implemented section 1071 by means of a new rule that requires covered lenders to collect, and annually report to the CFPB, certain information from small businesses applying for credit.³

Part II.A below outlines core regulatory requirements relating to the rule's prohibition against discouraging applicants from providing responsive information. Lenders covered by the rule violate ECOA if they fail to observe these requirements. Part II.B explains that the Bureau intends for its enforcement and supervisory work in connection with the new rule to focus on covered lenders' compliance with the rule's prohibition against discouraging applicants from providing responsive information.

II. Policy Guidance

A. Relevant Regulatory Requirements

Although the new rule provides a covered lender with considerable discretion in designing its data collection procedures, it requires that collection methods be designed not to have the effect of discouraging applicants from submitting responsive information.⁴ The rule also requires that requests for data be prominent to applicants, that applicants can easily respond to such requests, that such requests initially be made prior to notifying an applicant of the lender's decision on the application, and that the time and manner of a lender's collection procedures otherwise serve to obtain responsive information.⁵ In general, compliant lenders will seek to maximize the collection of responses from applicants and minimize missing or erroneous data.⁶

Covered lenders must also work to identify and respond to potential indicia of discouragement in their practices, policies, and procedures, including low response rates from

³ The rule requires lenders to seek some data from the applicant, some data from the applicant or appropriate third-party sources at the lender's discretion, and some data internally. This Policy Statement pertains to the collection of data from applicants.

⁴ 12 CFR 1002.107(c)(1) and (2)(iii); *see also generally* § 1002.107(c)(2).

⁵ 12 CFR 1002.107(c)(1), (2)(i), (ii), and (iv).

⁶ Comment 107(c)(2)-1.

applicants to lenders' requests.⁷ In general, this includes promptly investigating any indicia of potential discouragement; taking prompt remedial action if discouragement or other improper conduct is identified; monitoring for low response rates and for significant irregularities in any particular response that may indicate steering, improper interference, or other potential discouragement or obstruction of applicants' preferred responses; monitoring response rates and responses by division, location, loan officer, or other factors to ensure that no discouragement or improper conduct is occurring in some parts of a financial institution, even if the financial institution maintains adequate response rates and responses overall; and providing adequate training to loan officers and other persons involved in collecting data from loan applicants.

B. Enforcement and Supervisory Action

The CFPB intends to use its enforcement and supervisory authorities to focus on covered lenders' compliance with these requirements relating to the rule's prohibition against discouraging applicants from submitting responsive information. The CFPB intends to pay particular attention to covered lenders' response rates for data requested from applicants.⁸ As appropriate, the CFPB intends to consider how a lender's response rates compare to financial institutions of a similar size, type, geographic reach, or other relevant factors, because, as noted in the rule, low response rates may indicate discouragement or other failure by that lender to maintain proper collection procedures consistent with the rule.⁹ Similarly, the CFPB intends to consider, among other things, irregularities in a particular response (for example, very high rates, relative to similar lenders, of an applicant response of "I do not wish to provide this information"

⁷ 12 CFR 1002.107(c)(3) and (4). Response rates may appropriately be measured as the percentage of covered applications for which the lender obtains some type of response to data requests submitted to applicants. For demographic data subject to the statutory right to refuse, this includes responses of "I do not wish to provide this information" or similar, or if an applicant responds that there are no principal owners.

⁸ Response rates may be relevant across all applicant-provided data, though they are particularly relevant for the collection of the protected demographic data pursuant to § 1002.107(a)(18) and (19). These inquiries are particularly sensitive and responsive data are especially important for the purposes of the rule.

⁹ 12 CFR 1002.107(c)(4).

or similar) because that may indicate steering, improper interference, or other potential discouragement or obstruction of applicants' preferred responses.

III. Regulatory Requirements

This Policy Guidance is a non-binding general statement of policy articulating considerations relevant to the CFPB's exercise of its supervisory and enforcement authority. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The CFPB has determined that this Policy Guidance does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring Office of Management and Budget approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2023-07231 Filed: 5/30/2023 8:45 am; Publication Date: 5/31/2023]